

PILOT SERVICES AGREEMENT

This PILOT SERVICES AGREEMENT (this “Pilot Services Agreement”) is dated as of _____, 20__, by and between POWERTECH WATER, INC.d/b/a ElectraMet, a Delaware corporation, with its primary place of business located at 749 W. Short Street, Lexington, KY 40508 (the “Company”) and **[CUSTOMER ENTITY NAME]**, a **[STATE/COUNTRY OF INCORPORATION/ORGANIZATION]** **[ENTITY TYPE]**, having a principal place of business at **[FULL ADDRESS]** (“Customer”).

Purpose; Limitations: Company and Customer hereby acknowledge that this Pilot Agreement is intended to serve as trial period to assess the feasibility and effectiveness of the Equipment (as described below) to meet Customer’s water treatment requirements and is not intended to be used as production equipment. In no event shall Company be liable for any claim that Equipment’s failure to satisfy Customer’s requirements or otherwise operate as intended.

Services and Equipment: Company shall provide to Customer the following described Services and Equipment, together with all present and future attachments, replacement parts, additions or proceeds therefrom (collectively, the “Equipment”), delivery and acceptance of which is hereby acknowledged, upon the terms and conditions described in the Terms. Customer hereby acknowledges and agrees that any Equipment usage beyond the maximum volume indicated below could result in additional Monthly Service Fees beyond that set forth in the below table(s).

Model Number / Serial Number	Description	Monthly Fee
[•]	ElectraMet™ ____ Cartridge System that includes ancillary Equipment (pumps, filter, piping)	\$(•)

Term: The term of this Pilot Agreement shall begin upon the delivery, installation and commissioning of the equipment (the “Effective Date”) and end on the last day of the month that is **[INSERT]** months after the Effective Date (the “Pilot Term”). Following the expiration of the Pilot Term, the Company and Customer shall either: (a) negotiate in good faith to enter into a Master Services Agreement for the on-going provision of the Services by Company to Customer or (b) provide notice of non-renewal to the other party not less than 10 days prior to the expiration of the Pilot Term. Absent such notice, this Pilot Agreement will automatically extend for successive one (1) month periods on identical Terms.

Fees and Payment Terms: Customer shall pay all invoiced fees upon successful commissioning of the Equipment. In exchange for the continued use of the Services and Equipment by the Company beyond the initial term, Monthly Pilot Fees will be invoiced and shall be payable per the terms set forth below. Customer will be invoiced at the time of shipment and payment will be due net 10 days from installation and commissioning. Liability for and payment of the invoices as presented is not contingent upon the outcome of this Pilot agreement.

Use of Equipment: Unless otherwise agreed by the Company in writing, Customer shall only use the Equipment at the following location(s): _____.

ADDITIONAL TERMS AND CONDITIONS: This Pilot Agreement is subject to the additional terms and conditions set forth on Schedule A hereto, the same being incorporated herein by reference (the “Terms and Conditions”). By signing this Pilot Agreement, Customer agrees to the attached Terms and Conditions. This Pilot Agreement together with the attached Terms and Conditions comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and



warranties, and communications, both written and oral. This Pilot Agreement together with the attached Terms and Conditions prevail over any of Customer's general terms and conditions.

By signing below, the Customer hereby agrees to the terms of this Pilot Agreement, including those set forth in the Company's Terms and Conditions attached hereto Schedule A and incorporated by reference.

CUSTOMER:

By: _____

Print Name: _____

Title: _____

COMPANY:

POWERTECH WATER, INC. d/b/a ElectraMet

By: _____

Print Name: _____

Title: _____

SCHEDULE A

STANDARD TERMS AND CONDITIONS

These terms and conditions of service (these “Terms”) are the only terms that govern the provision of services by POWERTECH WATER, INC. d/b/a ElectraMet, a Delaware corporation, having a principal place of business at 749 West Short Street, Lexington, Kentucky 40508 (“Company”) and the customer indicated in the Pilot Agreement (“Customer”).

1. Delivery and Acceptance of Equipment. Upon the execution of the Pilot Agreement, Company agrees to provide Customer the Equipment set forth in the Pilot Agreement. Following the installation and commission of the Equipment to the reasonable satisfaction of Customer, Customer agrees to immediately take control, possession, management, use and operation of the Equipment for the Term (as defined in the Pilot Agreement). Customer shall assume complete responsibility at all times for the Equipment under all applicable laws, and shall further keep the Equipment free of all liens or encumbrances and other security interests of any kind. Customer shall not acquire any right, title or interest in or to the Equipment, except for the right to possess and use the Equipment as provided herein, subject to the earlier termination of such right as provided herein. Company may inspect the Equipment at any time without prior notice during regular business hours.

2. Surrender of Equipment. Upon the expiration or termination of the Pilot Agreement, Customer shall pack, crate and return the Equipment to the Company at the address noted in this agreement. Customer shall be responsible for the payment of any and all damages incurred with respect to the Equipment during the Term (as defined in the Pilot Agreement), and for any and all repairs necessary to place the Equipment in the same condition as when delivered, reasonable wear and tear excepted and otherwise in the condition required by these Terms.

3. Fees, Taxes and Late Charges. Customer shall pay or, if requested by Company, reimburse Company for any and all sales, use, personal property taxes, or other taxes, fees or assessments levied against or imposed upon the Equipment, its value, use or operation, or levied against or based upon the fees paid or to be paid hereunder. Customer’s obligation (without prior notice or demand) to pay undisputed Monthly Pilot Fees and all other undisputed amounts due hereunder shall be absolute and unconditional, and not subject to any abatement, set off, defense, recoupment, or reduction.

4. Limited Warranties. Company warrants that it shall perform the Services in a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services. CUSTOMER ACKNOWLEDGES AND AGREES THAT COMPANY HAS NOT MADE, AND HEREBY DISCLAIMS, ANY EXPRESS OR IMPLIED WARRANTY AS TO MERCHANTABILITY, FITNESS FOR ANY PURPOSE OR USE, DESIGN OR CONDITION OF THE EQUIPMENT, QUALITY OF MATERIAL OR WORKMANSHIP, OR AS TO ANY OTHER MATTER WHATSOEVER RELATING TO THE EQUIPMENT OR SERVICES EXCEPT AS SET OUT ABOVE. CUSTOMER AGREES THAT CUSTOMER LEASES THE EQUIPMENT “AS IS”.

5. Lawful Use; Records. Customer shall use the Equipment only in its business and in compliance with all laws, rules, and regulations of any jurisdiction where the Equipment is used or located. Customer assumes all responsibility for any and all licenses, titles, permits and other certificates as may be required by law or otherwise for Customer’s lawful operation of the Equipment. Customer represents and warrants to Company at all times that (i) Customer has the right and ability to enter into the Pilot Agreement; and (ii) the Pilot Agreement constitutes a valid, legal, and binding obligation and agreement of Customer, enforceable against Customer in accordance with its terms. Customer shall use and operate the Equipment in a careful and prudent manner for the purposes and in the manner intended to be used, in strict compliance with any and all instructions provided by the Company.

6. Alterations. Customer shall not make or suffer any changes, alterations or improvements to the Equipment and shall not permit the Equipment to go or remain out of Customer’s possession without the written approval of Company and then only to the extent of such approval. Customer shall be liable for and shall pay Company for any loss or damage resulting from changes, alterations or improvements to the Equipment made without Company’s written approval.

7. Service and Maintenance. Company shall provide the Services set forth in the Pilot Agreement. Unless otherwise specified in the Pilot Agreement, Customer shall service the Equipment at reasonable intervals as necessary and proper in accordance with industry standards and, in connection therewith, maintain the Equipment in good working order, condition and appearance, and return the Equipment to the same level as when the Equipment was delivered to Customer.

8. Damage. Customer shall bear the entire risk of loss, theft, destruction of or damage to any item of Equipment from any cause whatsoever (“Loss or Damage”). Customer shall promptly notify Company in writing of any Loss or Damage. No Loss or Damage to any item of Equipment shall relieve Customer of any obligation with respect to such Equipment under the Pilot Agreement. In the event of Loss or Damage, Customer shall, at the option of Company: (a) put such Equipment in good condition and repair in accordance with the manufacturer’s recommendations, and to the reasonable satisfaction of Company, at Customer’s expense; or (b) pay Company the full replacement value.

9. Defaults And Remedies. Customer shall be deemed to be in default hereunder upon the occurrence of any of the following events (“Events of Default”): (1) Customer shall fail to make any payment due hereunder within 15 days after its due date; (2) Customer shall fail to perform or observe any other term, covenant, or condition in these Terms; (3) Customer shall have abandoned the Equipment; or (4) Customer shall have defaulted under any other agreement with Company beyond all applicable cure periods. Upon the occurrence of an Event of Default, Company may declare the Pilot Agreement to be in default, and thereafter may exercise any one or more of the following remedies: (1) declare all amounts due and owed by Customer to Company, including any amounts relating to partial monthly periods currently in process, and all other unpaid fees, taxes and charges under the Pilot Agreement, immediately due and payable; (2) repossess, retake and/or retain any or all of the Equipment free of all rights and claims of Customer without notice, legal process, or judicial intervention, and without releasing Customer of any term, covenant or condition provided herein; (3) terminate the Pilot Agreement; and/or (4) exercise any other right or remedy available to Company at law or in equity. Company’s waiver of any Event of Default shall not constitute a waiver of any other Event of Default or a waiver of any term or condition of the Pilot Agreement. No right or remedy referred to herein is intended to be exclusive, and each may be exercised concurrently or separately and from time to time. Unless otherwise provided elsewhere in the Pilot Agreement, a termination hereunder shall occur only upon written notice by Company to Customer and only with respect to such items of Equipment as Company specifically elects to terminate in such notice. Except as to such items of Equipment with respect to which there is a termination, the Pilot Agreement shall remain in full force and effect and Customer shall be and remain liable for the full performance of all of its obligations hereunder.

10. Assignment; Subleasing. Customer shall not have the right to assign the Pilot Agreement or sublet, rent or otherwise hire out the Equipment to any person, firm, partnership, association or corporation other than Company, without the prior written consent of Company. Company shall have the right to assign the Pilot Agreement, and in the event of such an assignment, the assignee shall acquire all rights and remedies possessed by or available to Company.

11. Indemnification. Customer shall indemnify Company against, and hold Company harmless from, any and all claims, actions, damages, obligations, liabilities, liens (including any arising or imposed under the doctrines of strict liability in tort or product liability), and costs and expenses (including attorney’s fees), arising from or out of the manufacture, purchase, lease, possession, operation, condition, return, or use of the Equipment, or by operation of law, excluding

however any of foregoing resulting solely from the gross negligence or willful misconduct of Company. Customer agrees that upon written notice by Company of assertion of any such claim, action, damage, obligation, liability, or lien, Customer, at Customer's expense, shall assume full responsibility for the defense thereof, provided that Company shall have the right, but not the obligation, to participate in any defense conducted by Customer without relieving Customer of any of its obligations hereunder. The provisions of this Section shall survive termination of the Pilot Agreement.

12. **LIMITATION OF LIABILITY.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES ARISING FROM OR RELATING TO ANY BREACH OF THE PILOT AGREEMENT, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS PARAGRAPH IS INTENDED TO LIMIT OR RESTRICT THE INDEMNIFICATION RIGHTS OR OBLIGATIONS OF ANY PARTY UNDER SECTION 11.

13. **Insurance.** Customer shall obtain and maintain insurance on or with respect to each item of Equipment at its own expense and in the amounts and forms satisfactory to Company. In no event shall any insurance coverage be less than the following: (a) physical damage insurance insuring against loss or damage to the Equipment in an amount not less than the full replacement value of such Equipment; and (b) \$500,000 combined single limit for bodily injury liability and property damage; and (c) \$100,000 property damage liability. Customer shall furnish Company with a certificate of insurance evidencing issuance of such insurance to Customer in at least the minimum amount required herein, naming Company and such other parties designated by Company as additional insured thereunder for liability coverage, and as loss payee for property damage coverage. If Customer fails to provide such insurance, Company shall have the right, but no duty, to obtain such insurance, and Customer shall pay Company all costs thereof.

14. **Intellectual Property.** Customer acknowledges that Company is the owner of all right, title and interest in and to the Equipment (including any software embedded in the Equipment and any documentation related thereto), all prior and subsequent versions thereof, and all other intellectual property related to the Equipment, including without limitation patents, designs, mask works, trademarks, know-how and other proprietary rights (collectively, the "Company Intellectual Property"), and that, Customer shall obtain no right whatsoever in the Company Intellectual Property except to the extent necessary to use the Company Intellectual Property exclusively in accordance with the Equipment and Services for their intended purpose. Company shall have the right, in its sole discretion, to disclose, publish, and apply for and prosecute to issuance or grant, at its expense, under any applicable international laws or treaties, patent, copyright, design registration, or other intellectual property protection anywhere in the world, in connection with Company Intellectual Property. Customer agrees to use all commercially reasonable efforts and security precautions to protect the Company Intellectual Property from unauthorized access, reproduction or distribution. Customer shall not modify any of the Company Intellectual Property or attempt to reverse engineer, disassemble, or decompile any Company Intellectual Property, translate or create any derivative works, compilations, or collective works related thereto, or apply any process, technique, defeat device, circumvention mechanism or procedure to ascertain or derive the source code to the Company Intellectual Property. As between Customer and Company, Company is and will remain the sole and exclusive owner of all right, title, and interest in and to all information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly, from any use of the Equipment or Services, including all intellectual property rights relating thereto.

15. **Confidentiality.** All non-public, confidential or proprietary information of Company ("Confidential Information"), including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, consumer data, or rebates disclosed learned by Customer during its engagement with Company, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," is confidential, and is solely for Customer's use in utilizing the Equipment and Services during the Term, and may not be disclosed or copied unless authorized by Company in writing. Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Customer's breach of the Pilot Agreement; (b) is obtained by Customer on a non-confidential basis from a third-party that was not legally or contractually restricted from disclosing such information; or (c) Customer establishes by documentary evidence, was in Customer's possession prior to Company's disclosure hereunder.

16. **Miscellaneous.** These Terms shall be governed, interpreted and construed under the laws of the State of Kentucky. Kentucky law shall prevail in the event of any conflict of law without regard to, and without giving effect to, the application of choice of law rules. LESSEE WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY LITIGATION ARISING FROM OR RELATED TO THE PILOT AGREEMENT. These Terms, together with the Pilot Agreement, represent the entire Agreement between the parties with respect to the subject matter hereof and supersedes all previous agreements between the parties covering the same subject matter. These Terms cannot be amended or altered except by a written instrument signed by both parties. The failure of Company to insist upon the punctual or strict performance of any covenant of Customer hereunder or Company's failure to exercise any right or remedy available under these Terms or the Pilot Agreement shall not constitute a waiver of any subsequent default hereunder or of any subsequent right or remedy of Company. The obligations of the parties under these Terms and the Pilot Agreement which by their nature are intended to survive termination or expiration (including, without limitation Sections 11, 12, 14 and 15 of these Terms) shall survive the termination or expiration of the Pilot Agreement for a period of three years.